

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 11596

PERMIT 7086

LICENSE 4699

ORDER ALLOWING CHANGE IN THE POINT OF DIVERSION,
ADDITION OF A POINT OF REDIVERSION AND
AMENDING THE LICENSE

WHEREAS:

1. License 4699 was issued to Frank Carmichael and was filed with the County Recorder of Yuba County on September 23, 1957.
2. License 4699 was subsequently assigned to Yuba Investment Company.
3. An order designating licensee, and amending quantity, point of rediversion and place of use was granted on January 24, 1980.
4. A petition for change in the point of diversion, and rediversion has been filed with the State Water Resources Control Board and said Board has determined that good cause for such change has been shown.
5. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The point of diversion and rediversion under this license shall be as follows:
 - 1.) Point of Diversion - South 200 feet and East 550 feet from NW corner Section 21, T17N, R6E, MDB&M being within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 21 and
 - 2.) Point of Rediversion - South 1,400 feet and East 1,400 feet from NW corner of Section 20, T17N, R6E, MDB&M being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 20.
2. The paragraph pertaining to the continuing authority of the Board is replaced with the following:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

Dated: APRIL 2 1987



Raymond Walsh, Chief
Division of Water Rights

May 1 to December 1 for irrigation of 1,100 acres within Sections 13 and 24, T17N, R4E; Sections 1, 2, 11, 12, 13, 14 and 24, T17N, R5E; and Sections 7, 18 and 19, T17N, R6E, MDB&M.

2. Yuba also holds a pre-1914 water right covered by Application 12-2406 for storage of 2,300 acre-feet per annum (afa) in Lake Mildred on Dry Creek and for direct diversion of 2.6 cfs from Dry Creek at a diversion dam about one mile below Lake Mildred. The diversion dam and ditch and place of use are all the same as License 4699.

Background

3. Yuba was incorporated in 1935 and came under control of one Frank Carmichael several years prior to his filing Application 11596 in 1946. It is a public utility regulated by the California Public Utilities Commission (hereafter PUC). It serves nine customers, delivering water for irrigation, and leases Lake Mildred and a surrounding game preserve for recreational purposes. Yuba is owned by three stockholders, Lawrence A. Santi, Harold W. Gates and Royal Pines Lake Company.

4. A complicated series of transfers, assignments, claims and counter-claims since 1962 has resulted in a cloud upon the ownership of the license. In addition, staff field investigations and investigations by the PUC have revealed the need to review the diversion quantity and use of water by Yuba. We shall examine the two issues separately.

Ownership of License 4699

5. "Section 767, Title 23, California Administrative Code, provides:

Attach to License 4699

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 4699)
(Application 11596))
YUBA INVESTMENT COMPANY, INC.)
Licensee)

Order: WR 80-4

Source: Dry Creek

County: Yuba

ORDER DESIGNATING LICENSEE AND AMENDING
QUANTITY, POINT OF REDIVERSION AND PLACE
OF USE

BY BOARD VICE CHAIRMAN MILLER:

On May 1, 1975, Yuba Investment Company, Inc., (hereafter Yuba) informed the State Water Resources Control Board (hereafter Board) that it is the sole owner of License 4699 and that S. A. Coolidge's name should be removed as co-owner of the license. On December 23, 1975, Roy St. Martin and James Watkins, Yuba customers and successors in interest to Coolidge, requested a Board hearing to show cause why they and other assignees of Coolidge should not be named as owners of the license.

A hearing was held on July 10, 1978 before Board Member W. W. Adams and Vice Chairman William J. Miller to determine the ownership of the license, the use of water under the license, and whether the license should be partially or fully revoked. The parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the License

1. License 4699, Application 11596, is in the name of Yuba Investment Company, Inc., and S. A. Coolidge, Jr., in Board records. Eighteen other persons also appear in the records as purported assignees of Coolidge's alleged interest. The license authorizes direct diversion of 16 cubic feet per second (cfs) from Dry Creek, Yuba County, during the period

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The contract of sale purported to transfer interests held by Doris Carmichael as well. We believe it important to note that a broker named Don Shinkle allegedly handled the sale. Shinkle is, and was, the owner of River Valley Land Co., a later claimant to ownership of the license.

9. On or about December 9, 1968, Doris Carmichael notified the Board that she and her son, Francis Carmichael, were the owners of the license. On January 27, 1969, she assigned whatever interest she may have held at that time to River Valley Land Company; thereafter, on February 18, 1970, it assigned the water rights to S. A. Coolidge Jr., who had repeatedly been told by Board staff that there were questions as to ownership. On March 19, 1975, Coolidge assigned his rights to 18 different persons. Two of the present claimants, Roy S. Martin and James Watkins, claim title as his successors in interest. Both are customers of Yuba.

10. Correspondence in the files between the staff and the asserted owners reveals that on March 11, 1969, prior to its assignment to Coolidge, in response to an inquiry, River Valley Land Co. stated that it had no interest in the water rights and that its sole interest was a deed of trust. At about the same time, Doris Carmichael responded that she "thought the project had been abandoned".

11. There have been no claims of ownership of Yuba stock conflicting with Santi since he acquired the property. According to the records, Yuba has maintained full control of the water rights, has exercised all of the rights of ownership and has undertaken all of the liabilities and responsibilities of the license in maintenance and repairs in distributing and selling the water to its nine customers. Yuba has further contested the

"The board will not undertake to determine contests as to ownership of rights initiated by applications to appropriate water, its only concern being to maintain such a record of ownership as will facilitate communication with owners when necessity demands. The board will ordinarily accept any claim which is asserted to ownership of an application, permit or license unless the record title holder, or an asserted successor in interest, objects. When a contest develops as to ownership, the board will not ordinarily change its record until the matter is either determined by a court or adjusted to the mutual satisfaction of the parties, unless evidence of continued occupation, use, or control justifies a different course."
(Emphasis added)

6. We do not, therefore, in making our findings below, attempt to determine the validity of the various assignments of License 4699. Our holding and order shall be based upon the record titles and evidence of occupation, use and control which are in the hearing record.

7. On October 28, 1946, Frank Carmichael, reputedly the sole owner of Yuba Investment Company, Inc., filed Application 11596 (License 4699) for the diversion of water which would be distributed and sold to customers of the corporation. He was the record owner until August, 1961, at which time divorce proceedings resulted in a decree of the Superior Court, County of Yuba (Action No. 14797), by which his former wife, Doris Carmichael, was awarded as her separate property all stock of Yuba, including the water rights, together with certain other real property of the parties. The water rights apparently were appurtenant at the time to the stock of Yuba and to Yuba itself as a corporate entity.

8. Doris Carmichael submitted incomplete Reports of Licensee for 1963, 1964, and 1965. However, according to contracts and Deeds of Trust entered into evidence, along with correspondence to the Board appearing in the Board files, all shares of stock in Yuba, the water rights and licenses "appurtenant to" Yuba, along with certain real property, were sold in 1964 by Frank and Francis Carmichael to Lawrence Santi and Earl Gates. The purchase price was \$100,000.00.

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assignments or transfers were authorized by the commission. Although we do not believe it binding upon our decision, it is persuasive to our findings above.

15. We further find that even if it were successfully argued that the assignments of License 4699 were valid and binding upon us, appropriative rights, if any, which Coolidge may have had were lost through non-use.^{1/} His assignees would take nothing. At the same time we recognize that Coolidge's interest, if any, was of an individual interest as a co-owner, thus a pro-rata partial reduction of the license would be in that order if the extent of interest could be determined. We do not so conclude. We find that at all times Yuba has solely exercised the full rights to the license and within the capabilities of its system (to be discussed below) has put the water to which it is entitled under the license to beneficial use, and that at no time did Coolidge exercise incidents of control or comply with the conditions of the license.

Extent of Beneficial Use by Licensee

16. Testimony by Yuba's representative during the hearing disclosed that the actual place of use under the license had been reduced from 1,100 acres to 220 acres. It was further stated that the capacity and condition of the irrigation ditch was creating loss of an undetermined but large quantity of water. A field inspection in 1969 revealed that the capacity of the ditch was no more than 6 cfs, although the licensed quantity was 16.0 cfs. Large losses were

^{1/} When the person entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of three years, such unused water reverts to the public and shall be regarded as unappropriated public water. Water Code Section 1241.

claims of all other parties since it became aware of the disputes sometime in 1969 and has defended the company in PUC actions. All reports of licensee have been submitted by Yuba.

12. The Board records further reveal that, during his period of alleged ownership, Coolidge reported that he had not commenced use of the water right (1970 to 1975), that he intended to purchase water from Yuba and that he failed to exercise any claims of ownership of the license. Coolidge's assignees are all purported customers of Yuba and exercise no rights of ownership of the license; neither have they used water under the license, other than amounts sold to them within the discretion and control of Yuba. Claimants appearing at the hearing were James Watkins, Richard McCullough, Charlene Adams, Dorothy St. Martin and Richard Vieira. All are customers of Yuba. Only Watkins and Vierra testified. Watkins gave no evidence other than to assert the validity of the assignments and state that he was "chasing water". Vieira asserted his claim of interest solely as a user and dependent upon the irrigation ditch.

13. We find that License 4699 is appurtenant to Yuba ownership and the exercise of its liabilities and duties as a public utility. We agree with Yuba that License 4699 has been an integral part of the company at all times, and that except for the various assignments, which may or may not have been valid, no one other than Yuba has ever attempted to exercise any other dominion or control.

14. Public Utility Code, Section 851, provides, in part, that any sale, assignment, disposal or encumbrance of any of the property of a utility, including licenses or permits, other than by an order of the Public Utilities Commission authorizing it, is void. There is no record that any of the purported

observed throughout the length of the ditch. A further field inspection on August 24, 1978, (conducted by order of the Board) disclosed current leakage and losses. However, it was found that much of the water which leaks from the ditch returns to Dry Creek.

17. Yuba has experienced financial difficulties in maintaining and repairing the ditch, and was unable to supply the full quantities of water requested by its customers during the recent drought. A PUC hearing on July 15, 1975, resulted in an expanded clean-up and maintenance program.

18. We find that whereas the licensed place of use covers 1,100 acres, the most recent reports and testimony at the hearing (RT 36, 37, 38) show irrigation use on 220 acres gross in Sections 12 and 13, T17N, R5E, MDB&M. The place of use should therefore be amended accordingly.

19. No water has been rediverted from the point on South Honcut Creek for more than five years, and that point should be deleted from the license.

20. We further find that the licensed diversion amount should be reduced to six cfs.

Conclusions

21. From the foregoing findings, the Board concludes that Yuba Investment Company, Inc., is the sole licensee, that the quantity of water to be diverted should be reduced to six cfs; that the place of use should be reduced to 220 acres, and the point of rediversion on South Honcut Creek should be deleted, as set forth in the order following.

ORDER

IT IS HEREBY ORDERED that License 4699 be, and is hereby, amended as follows:

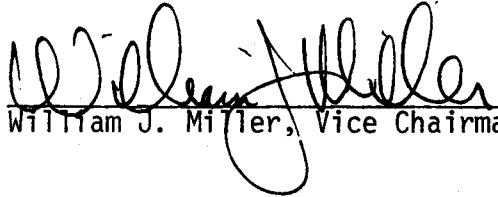
1. The name of S. A. Coolidge, Jr., is deleted and Yuba Investment Co., Inc., is inserted as the sole licensee of License 4699.


2. The licensed quantity of diversion of 16.0 cubic feet per second is amended to read 6.0 cubic feet per second.

3. The point of redirection within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 13, T17N, R4E, MDB&M is deleted from the license and the total acreage of the place of use is amended to read 220 acres within Sections 12 and 13, T17N, R5E, MDB&M.

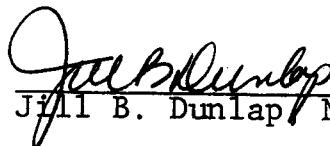
Dated: JAN 24 1980

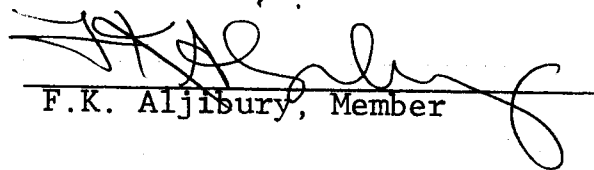
WE CONCUR:


William J. Miller, Vice Chairman


Carla M. Bard, Chairwoman


L. L. Mitchell, Member


Jill B. Dunlap, Member


F.K. Aljibury, Member



STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 11596

PERMIT 7086

LICENSE 4699

THIS IS TO CERTIFY, That Frank Carmichael % Ray Manwell, Atty.
410 Nagler Bldg.

Marysville, California

Notice of Assignment (Over)

has made proof as of June 27, 1955,

(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of
Dry Creek in Yuba County

tributary to Yuba River

for the purpose of irrigation use

under Permit 7086

of the State Water Rights Board and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the terms of the said permit; that the priority of the right herein confirmed dates from October 28, 1946; and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed sixteen (16) cubic feet per second to be diverted from about May 1 to about December 1 of each year.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with other vested rights.

Licensee shall at all times by-pass a minimum of two (2) cubic feet per second, or the natural flow of the stream whenever it is less than two (2) cubic feet per second, at the point of diversion to maintain fish life.

The point of diversion of such water is located

South fifty-eight degrees thirty-four minutes West (S 58° 34' W) five hundred thirty-four (534) feet from NE corner of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 4, T 17 N, R 6 E, MDB&M being within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 4.

The point of re-diversion is located North eight hundred fifty (850) feet and West four hundred fifty (450) feet from E $\frac{1}{4}$ corner of Section 13, T 17 N, R 4 E, MDB&M being within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 13.

A description of the lands or the place where such water is put to beneficial use is as follows:

1100 acres within Sections 13 and 24, T 17 N, R 4 E, Sections 1, 2, 11, 12, 13, 14 and 24, T 17 N, R 5 E, and Sections 7, 18, and 19, T 17 N, R 6 E, MDB&M as shown on map filed with State Water Rights Board.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

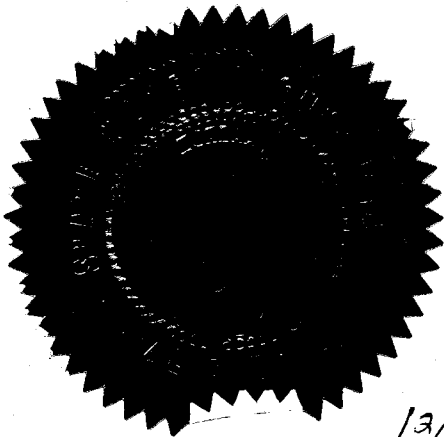
Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: SEP 20 1957

STATE WATER RIGHTS BOARD



By Leslie C. Johnson
Leslie C. Johnson
Chief Engineer

330-62 RECEIVED NOTICE OF ASSIGNMENT TO Maria Carmichael

12/23/68 Records chgd to show owners as
Francis Carmichael & Boris Carmichael

1/27/69 RECEIVED NOTICE OF ASSIGNMENT TO River Valley Land Company

9-23-69 Int. of Francis L. Carmichael asgd to
Yuba Investment Company;

2-20-70 Int. of River Valley Land Co. asgd to
S. A. Coolidge, Jr.

1/24/80 see order Wr 80-4

Order allowing change in point of Diversion

Application # 11596

LICENSE 4699

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO Frank Carmichael

DATED SEP 20 1957

40140 7-56 4M ① SPO